



**JUSTICE & PUBLIC SAFETY CABINET
OFFICE OF DRUG CONTROL POLICY**

**STUDENT DRUG TESTING:
A COMPONENT OF KENTUCKY'S APPROACH
TO ADDRESSING YOUTH SUBSTANCE ABUSE

A WHITE PAPER**

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The Office of Drug Control Policy in conjunction with
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The Kentucky Office of Drug Control Policy (ODCP), an office of the Justice and Public Safety Cabinet, created a state-wide task force in 2005, the Student Drug Testing Advisory Council, to examine issues associated with student drug testing. *STUDENT DRUG TESTING: A COMPONENT OF KENTUCKY'S APPROACH TO YOUTH SUBSTANCE ABUSE, A WHITE PAPER*, was developed at the direction of the council.

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EXECUTIVE SUMMARY

According to the Substance Abuse and Mental Health Service Administration (SAMHSA), students who use drugs, compared to nonusers, are more likely to drop out of school or perform other disruptive behaviors, further unsettling their educational environment. Student drug testing is one more method to help curb illicit drug use among students and help steer those who test positive toward treatment and education. The Office of National Drug Control Policy (ONDCP) states that implementing student drug testing can achieve three public health goals:

- It helps deter children from initiating drug use.
- It can identify children who have just started using drugs so administrators and parents can intervene early.
- It can help identify children who abuse drugs so they can be referred to effective drug treatment.

Student drug testing is considered a community-based strategy to help diminish middle and high school student's demand for illegal drugs. Drug testing can help identify those students who test positive and guide them toward treatment and education on the ramifications of long-term drug use.

The 2002 Supreme Court decision, *Board of Education of Independent School District No. 92 of Pottawatomie County vs. Earls*, gave school administrators another tool for detecting drug use. Under *Earls*, students who choose to participate in all extracurricular activities are now eligible for drug testing, expanding on the court's ruling in *Vernonia School District 474 v. Acton*, which limited testing to student athletes. However, before a school district chooses to implement a comprehensive student drug testing program, certain steps must be taken in order to protect against litigation.

To understand student drug testing, school boards, parents, state and local officials should be prepared to:

- Conduct a needs assessment study within the school district so officials can gauge the severity of their drug problem.
- Gain support of the local community as well as student body so everyone perceives inclusion and not persecution.
- Create a clear, written policy that has been reviewed by legal counsel.

In February 2004, Governor Ernie Fletcher charged Lieutenant Governor Steve Pence with assessing the status of local, state and federal drug programs, policies and initiatives and to prepare recommendations that will provide the first uniform, balanced and collaborative drug control policy for Kentucky. On February 12, 2004, 51 members began the needs assessment process and after 20 weeks of gathering input from citizens throughout the Commonwealth, a final report was generated highlighting several recommendations about current statewide abuse policies. To view the full report, visit: www.odcp.ky.gov/aboutus/. As a result of the summit, Governor Fletcher established the Kentucky Office of Drug Control Policy (ODCP) in June 2004. Among the recommendations, drug testing was identified as a solution to help curb illicit drug use among school-aged children. Recommendations from the committee regarding student drug testing included:

- Establish Kentucky as a pilot model for school drug testing for the nation, with assistance from federal funding.
- Utilize a balanced, random suspicionless approach of all students who participate in any extracurricular activity.
- Consider random suspicionless testing for school personnel at piloted sites.
- Consider suspicion-based testing programs.

WHY BEGIN STUDENT DRUG TESTING?

This question has been debated for many years by school officials throughout the state. Some school systems decided to test their students and some have steered away from any action because of obstacles, such as cost, privacy concerns and lack of community support. Student drug testing is a complex issue that needs to be thoroughly dissected among community and school leaders, ensuring every decision is made in the best interest of students and the community as a whole.

Kentucky's Office of Drug Control Policy (ODCP), an office within the Justice and Public Safety Cabinet, created a state-wide task force to examine those issues associated with student drug testing. The first meeting, held February 25, 2005, brought together 26 individuals from around the state to discuss student drug testing. Since the inaugural meeting, the task force has grown to 84 members. School superintendents, principals, state officials and even a few high school students represented the various school districts.

As a goal of the Student Drug Testing Advisory Council, a summit would be held to bring together all school officials in the state to discuss student drug testing. In addition, a public policy white paper would be drafted for school districts across the state, helping them make an educated decision when deciding on what course of action each will take.

This white paper will serve as an informative piece examining parameters that are interwoven into this issue. ODCP hopes school officials will closely examine their community's needs and use this resource to make the right choice for their school system.

LEGAL HISTORY

Drug testing programs of any type raise limited privacy interests under the U.S. Constitution's Fourth Amendment and the Kentucky Constitution's § 10 which establish protections against unreasonable search and seizure. *Vernonia School District 47J v. Acton*¹ and *Brd. of Ed. of Independent School Dist. v. Earls*² are the current Supreme Court authorities governing randomized drug testing of athletes and students participating in extracurricular activities.³

In *Vernonia School District 47J v. Acton*, the U.S. Supreme Court, in a 6-3 decision, upheld a school policy that randomly drug tested student athletes. The school district instituted random drug testing of athletes in response to well documented, serious and burgeoning drug abuse by students and athletes in particular. The school's drug testing policies targeted student athletes because athletes were determined to be an at risk group and were glamorizing drug use as a result of their "role model" status.

The *Vernonia* decision requires a compelling governmental⁴ interest "important enough to justify the particular search at hand." The U.S. Supreme Court premised its ruling on the school's "compelling interest" in deterring drug use and promoting health and safety among students and athletes in particular. The *Vernonia* case balanced the school's compelling interest against the student's privacy expectations. In this balancing test, the Court articulated a four-part fact specific reasonableness analysis to weigh in the balance between a school's interests in deterring drug use and a student's privacy expectations. The Court considered the (1) legitimate privacy interests of the student; (2) character of the intrusion; (3) immediacy of the school's interest in the activity the

¹ *Vernonia School District 47J v. Acton*¹ 514 US 646 (1995).

² *Board. of Ed. of Independent School Dist. v. Earls*, 536 U.S. 822 (2002).

³ The immediate U.S. Supreme Court precedents that paved the way toward student drug testing were *Skinner v. railway Labor Executive ass'n*, 489 US 602 (1989), and *National Treasury Employees Union v. Von Raab*, 489 US 656 (1989), and *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

⁴ Schools and school personnel are government actors.

school seeks to prevent and (4) policy's effectiveness toward satisfying the school's interest. The Court then applied the specific facts to those considerations.

The Court found student athletes affected by the drug testing policy had a limited privacy expectation and those expectations were diminished because they voluntarily subjected themselves to the policy by choosing to participate in athletics. Athletes are required to submit to various physical examinations, vaccinations and communal locker rooms, all of which diminish overall privacy expectations. The Court also found the student's privacy expectations were further diminished by their un-emancipated minor status and the school's *in loco parentis*⁵ authority was custodial and tutelary.

The character of the schools' intrusion was found insignificant. The urine sample was considered minimally intrusive and the use of test results was limited. The specimen collection method merely required collection of urine within a bathroom stall. A trained adult monitor stood outside the stall to listen for sounds of tampering. The test results were kept in a separate and confidential file and provided only to persons who needed to know the results. The results were not turned over to law enforcement nor did they have any academic effect. The only use of the results was to determine whether the student would be disqualified from participating in athletics.

The nature of the schools' interest was considered important and immediate. The *Vernonia* case found the schools' interest in protecting the student's health, safety and ability to learn compelling. The Court held the school's compelling interest in preventing drug abuse among students outweighed the minimal privacy intrusion incurred and was an effective prevention method.

Subsequent to *Vernonia*, the Supreme Court decided *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls* in 2002.⁶ *Earls* expanded the category of students subject to drug testing to include all students participating in extracurricular activities. In *Earls*, the Court upheld randomized drug testing of all students participating in any extracurricular activity (not just athletes). The school district in *Earls* required all students to consent to drug testing before they could participate in any extracurricular activity.

Also in *Earls*, students argued they had a higher expectation of privacy because their club membership was not subjected to regular physicals or undressing in communal locker-rooms as were the athletes in *Vernonia*. The Court said in *Vernonia* the decision relied more on the school's *in loco parentis* or custodial authority over students as opposed to the character of the athletic authority. The Court further pointed out even non-athletic extracurricular club members voluntarily subject themselves to faculty oversight, club rules and regulations and thus have a diminished expectation of privacy. Essentially, the Court viewed participation in extracurricular activities as a voluntary privilege, not a right.

The Supreme Court's rulings in *Vernonia* and *Earls* may be summarized as follows:

1. Students affected by drug testing have a limited expectation of privacy because participation in extracurricular activities and sports is voluntary and privileged. The Court emphasized the non-punitive goals of the drug testing policy.
2. The method of intrusion must be minimally intrusive and the results be used and disseminated in the most restricted and confidential manner that still achieves the school's safety and drug prevention goals.
3. The nature and immediacy of the school's interest in drug testing students must be compelling, identifiable and well documented in fact. A policy is more likely to withstand scrutiny if there is a real and well-documented drug problem.

⁵ Standing in the place or in the shoes of parents.

⁶ 536 U.S. 822 (2002)

Vernonia and *Earls* also mandate a written drug testing policy. The policy must give notice to students of the activities and circumstances that will subject them to drug testing and the consequences of their refusal to participate. The school should be prepared to support the policy with school specific information documenting a genuine need for the drug testing policy. The policy should include testing procedures, chain of custody and address confidentiality of the results. Further, it is critically important that schools document the receipt of the policy by students.

Other Legal Rulings

There are a number of “extra-jurisdictional” state and federal court decisions that have no direct legal authority over student drug testing in Kentucky. These cases foreshadow the direction Kentucky courts may go and provide persuasive argument that Kentucky should follow the general trend of these decisions. Following are some notable extra-jurisdictional cases with a brief synopsis:

In *Hedges v. Musco*⁷, the 3rd Circuit Court of Appeals upheld suspicion-based drug testing of a student who appeared to be under the influence of drugs or alcohol. This ruling supported the test even though the results of the student's test were negative. (1. See *additional comments section at end of paper.*)

In *Todd v. Rush County Schools*⁸, the court upheld drug testing for all students involved in extracurricular activities including, but not limited to athletics. This ruling was before *Board of Education of Independent School Dist. v. Earls*.⁹

In *Joye v. Hunderton Central Regional High School Board of Education*¹⁰, New Jersey's highest court upheld random suspicionless drug testing of student drivers who were not involved in athletics or other extracurricular activities.

While there is no direct Kentucky legal authority expressly permitting randomized drug testing of students participating in extracurricular activities, Kentucky has laid a legal foundation that seems likely to support student drug testing policies consistent with the requirements and limitations provided for in *Vernonia* and *Earls*. (2. See *additional comments section at end of paper.*)

CHALLENGES OF IMPLEMENTING A STUDENT DRUG TESTING PROGRAM

Why Start Testing?

School administrators continually look for preventive measures to help keep students drug free. A tragic event, such as a drug overdose by a student, can persuade parents and school officials to quickly evaluate the situation. In most cases, a reactionary response such as tighter school guidelines, will be implemented to address an impending drug crisis in the community. But what if school officials could prevent such an event?

School officials must consult healthcare professionals to gain an understanding of drug abuse. A non-punitive student drug testing program is one component of various preventive measures school officials can take.

⁷ *Hedges v. Musco*, 204 F.3d 109 (3rd Cir. 2000).

⁸ *Todd v. Rush County Schools*, 139 F.3d 571 (7th Cir. 1998).

⁹ *Board of Education of Independent School Dist. v. Earls*, 536 U.S. 822 (2002).

¹⁰ *Joye v. Hunderton Central Regional High school Board of Education*, 176 N.J. 568, 826 A.2d 624 (2003).

Non-Punitive versus Punitive Approach

A non-punitive approach to student testing is considered the best alternative when developing a student drug testing program. Student drug testing can be considered an early detection tool for students who are currently using or have experimented prior to receiving a positive test. Implementing a comprehensive drug testing program can be the most effective method to help ensure students receive counseling or treatment once a positive test occurs. The student must be open to counseling and trust the school has every intention of providing the appropriate non-punitive disciplinary action once a positive test has been recorded.

Parents and students might be leery of school administrators if their sentiments toward the program are viewed as punitive. Students might be discouraged if their beliefs are that the program is geared toward inflicting punishment. The Office of National Drug Control Policy (ONDCP) affirms that students who are comfortable with the program only are more likely to participate. On the other hand, students who test positive may believe the school is out to get them in trouble; therefore becoming less open toward intervention.

Pros of Drug Testing

- The policy can deter students from initiating drug abuse.
- Testing can help identify early drug abuse among students, thus alerting parents and school administrators of an ensuing situation and keeping intervention as a viable option.
- It may identify students with drug dependency so they receive proper treatment referral.
- Testing is another tool for school administrators to use in helping curb drug abuse among students, as well as being another preventive measure to help steer students away from drug abuse.
- Testing can give students another viable option to say “NO” when offered drugs.

Cons of Drug Testing

- The costs associated with operating a program can be a huge obstacle for school systems. If financial resources are limited, schools must ensure its program will be comprehensive enough.
- The creation of a student drug testing program could create a perception that a particular school district might have a drug problem.
- Drug testing is not 100% accurate.
- Maintaining confidentiality for all students and parents can create concern.
- The perception that student drug testing is a further erosion of personal privacy.

Who is Being Tested and Why

According to ODCP, 81 Kentucky schools conduct some type of drug testing. Currently, 42 schools systems have implemented a random drug testing program. But whether the school has a reasonable suspicion or random program, the courts have narrowly defined groups that fall under the allowable testing pool. The courts have defined those students who participate in any extracurricular activity can now be deemed suitable for testing.

In cases labeled “special needs” by the U.S. Supreme Court (*New Jersey v. T.L.O.*, 469 U.S. 325, 1985), school administrators were empowered to search areas that otherwise would need a search warrant, so long as “reasonable suspicion” is found and there is evidence that a school rule violation has been broken. The Supreme Court has stated that “reasonable suspicion” means reasonable grounds that the law or rules of the school have been violated.

Why should we test students?

According to ONDCP, non-punitive student drug testing is an effective way of preventing drug abuse. In addition, student drug testing programs can create a “culture of disapproval toward drugs” helping students stand up to peer pressure.¹¹ Research has shown the strongest predictor of student drug abuse is student’s attitudes toward drug use and perceptions of peer use.¹²

In addition, school systems have a responsibility to exercise reasonable care for the safety of its students. ONDCP explains that once a positive test is recorded, it becomes imperative to use the result to intervene. If the follow-up test confirms the positive result, administrators and parents must do everything to ensure treatment and recovery is the focus.

Any Kentucky school instituting randomized student drug testing should follow these general guidelines:

- Any program testing students participating in extracurricular activities must be supported by documentation. A school must perform a rigorous study and collect data to determine whether or not their school has a drug problem substantial enough to permit drug testing.
- Students targeted for drug testing should be voluntary participants in some activity outside of regular school curriculum. No court has upheld suspicionless drug testing of all students or students not involved in some extracurricular or school driving or parking privilege. The key words are “voluntary” and “privilege”.
- The testing method should be the least intrusive method available, provide the student the highest degree of privacy and be reasonably practical in the collection handling and testing of the specimen (in practice this is urine testing).
- The testing program must be genuinely random. Every participant should stand an equal chance of selection.
- Develop a clearly written policy, including the following:
 - ◆ A statement of need for testing, providing the specific facts justifying testing at the particular school;
 - ◆ Notification to both parents and students regarding what activities will subject the students to randomized drug testing;
 - ◆ A list of which substances will be included in the drug test;
 - ◆ Disclosure of the collection method and process, including chain of custody (refer to your testing agency to fully outline their chain of custody process);
 - ◆ Description of who will assist in collecting test samples and how those personnel will be trained;
 - ◆ A confidentiality statement including strict limits on access to test results and student privacy. The policy must define who and under what circumstances school personnel will have access to the test results;
 - ◆ Notification to students and parents regarding which non-punitive and non-academic consequences will result from a positive test;
 - ◆ Independent medical review for a positive result that gives students and parents the opportunity to explain a positive result; and

¹¹ Alcoholism Drug Abuse Weekly, page 2

¹² Journal of School Health, page 164

- ♦ Written consent from students and their parents for testing clearly stating the consequences for refusal (disqualification from extracurricular activities).

As a practical matter, involve the school community by encouraging input and participation from parents, students, school administrators, teachers, counselors, school board members and coaches for consensus. Community involvement and support is clearly a deterrent to costly and unnecessary litigation.

WHERE DOES KENTUCKY STAND?

The following statistical analysis compares data from the 2004 Kentucky Incentives for Prevention (KIP) survey funded by the Kentucky Division of Mental Health & Substance Abuse and the 2004 Monitoring the Future (MTF) survey from the University of Michigan. The analysis was narrowed to 10th graders and six substances: alcohol, marijuana, prescription and over the counter (OTC) drugs, methamphetamine, cocaine and inhalants.

Each survey measured a youth's use in the last 30 days. The rationale for setting the parameters for 10th graders was many serious drug users have dropped out of school by 12th grade. Using 10th graders ensures a normal sample size. The only exception of the analysis is the use of inhalants by 8th graders. Given the exceptionally high rates of their inhalant use in Kentucky and nationally, it warranted the attention for this analysis.

- **Alcohol:** According to KIP/MTF, 33% of Kentucky 10th graders, compared to 35% of the nation's 10th graders, responded they had used alcohol one or more times in the past 30 days.
- **Marijuana:** According to KIP/MTF, 17% of Kentucky 10th graders, compared to 16% of the nation's 10th graders, responded they had used marijuana in the past 30 days.
- **Prescription and over-the-counter (OTC):** According to the KIP survey, 8.5% of Kentucky 10th graders responded they had used OTC's in the past 30 days. Specific statistics for prescription Oxycontin (30-day use) are 3.4% of Kentucky 10th graders. No national statistics were available.
- **Methamphetamine:** According to KIP/MTF, 2.6% of Kentucky 10th graders, compared to 1.3% of the nation's 10th graders, responded they had used methamphetamine in the past 30 days, twice the levels of national statistics.
- **Cocaine/crack:** According to the KIP survey, 3% of Kentucky 10th graders responded they had used cocaine/crack within the past 30 days, compared with the national average of 1.7%.
- **Inhalants:** According to the KIP/MTF, 6.5% of Kentucky 8th graders, compared to 4.5% of the nation's 8th graders, responded they had used inhalants in the past 30 days.

30-Day Drug Use of 10th Grade Students		
Substance of Choice	Kentucky Average	National Average
Alcohol	33.0%	35.0%
Marijuana	17.0%	16.0%
Prescription	8.5%	N/A
Methamphetamine	2.6%	1.3%
Cocaine/Crack	3.0%	1.7%
Inhalants (8 th grade use)	6.5%	4.5%

Source: KIP/MTF Data, 2004

Overall, Kentucky students are statistically similar to students nationally in their 30-day drug use. The substances where Kentucky youth exceed the national averages are marijuana, inhalants (among 8th grade students), methamphetamine and cocaine/crack. Methamphetamine and cocaine/crack were nearly double the national averages and inhalants were two full percentage points higher than the national average.

What other states are doing:

► Indiana

Student drug testing has been implemented in Indiana high schools since 1999. But in 2000, Indiana's Court of Appeals deemed the concept to be unconstitutional and all high schools halted their programs. This issue was finally heard by Indiana's Supreme Court and was overturned in 2002, thus reinstating student drug testing.

Once the program was reinstated, a study was conducted by Joseph R. McKinney, J.D., Ed.D, Chair of the Department of Educational Leadership at Ball State University. His study focused on one question: "Does the implementation of a random drug testing program result in a reduction of drug and alcohol use among high school students?" It further examined drug use among high school students in 1999 and after student drug testing was reinstated in 2002. A total of 83 high schools responded to the survey out of 94 high schools with random drug testing programs.

Some statistical findings from the McKinney Study are:

- 85% of high school principals reported an increase in either drugs or alcohol after the drug testing program was stopped in 2000.
- 89% of principals believe the drug-testing program undermines the effects of peer pressure by providing a legitimate reason to refuse use of illegal drugs and alcohol.
- Principals reported 352 students were disciplined during the 1999-2000 school year for drug or alcohol use, and the year after drug testing was deemed unconstitutional, 518 students were disciplined that same year.
- The McKinney Study concluded random drug testing policies appear to provide a strong tool for schools to use in the battle to reduce alcohol and drug usage among teens.

► Oregon

The Oregon Health and Science University did a unique study from 1999-2000, focusing their efforts on two high schools, one school who conducted student drug testing on athletes and the other school choosing not to conduct any drug testing. The study compared Wahtonka High School, where student athletes were drug tested and Warrenton High School, a similar school that was not testing its student athletes.

When comparing the two schools, statistically different trends existed:

- At the conclusion of the school year, 5.9% of student athletes from Wahtonka High School stated they were using illegal drugs compared to 19.4% of athletes at Warrenton High School.
- Other findings concluded students who were drug tested were three times less likely to use performance-enhancing drugs such as steroids.

► Michigan

According to a press release on May 19, 2003, and printed in the Journal of School Health (Vol. 73, No. 4, pages 159-165), University of Michigan researchers Ryoko Yamaguchi, Ph.D., Lloyd Johnston Ph.D., and Patrick M. O'Malley Ph.D. (social scientists at the Institute for Social Research) published a study entitled "Relationship Between Student Illicit Drug Use and School Drug-Testing Policies." The researchers concluded that drug testing of students does not deter drug use, based on a large, multi-year national sample of the nation's high schools and middle schools.

Research findings challenge the fundamental belief that implementing a student drug testing program will help curb student drug use. Authors analyzed data from surveys gathered in 1998, 1999, 2000 and 2001 which highlighted information from 722 secondary schools from across the nation. School administrators were asked to determine drug testing policies of the schools and 8th, 10th and 12th grade students were surveyed to conclude whether and what type of drugs might be prevalent in the school system. The University of Michigan survey states it is the only nationally representative sample of schools; thereby it should be used to help assess the effectiveness of implementing drug testing policies.

The survey concluded the following:

- Investigators explained there were identical rates of drug use in the schools that have drug testing and those that do not.
- For 12th graders, 36% of those surveyed reported having used marijuana 12 months prior to the survey being administered versus 37% of students who came from drug testing schools acknowledged using marijuana 12 months before the survey being administered.
- 19% of secondary schools have some form of student drug testing.
- Private and public secondary schools are equally likely to implement drug testing (high schools are more likely than middle schools).

To view the full report, visit: <http://www.studentdrugtesting.org/Michigan%20study.pdf>

DRUG TESTING PANELS AND METHODS

The various testing methods normally test for a "panel" of drugs. Typically, drug tests examine the sample for marijuana, cocaine, opiates, amphetamines and PCP. If a school has a particular problem with club drugs such as MDMA (Ecstasy) or GHB, it may wish to expand testing for these drugs. This limited panel will not identify the use of alcohol or tobacco, two products legal for adults but illegal for teens. Research and experience have shown that when usage rates for drugs decrease, so do usage rates for alcohol and cigarettes. Alcohol is a serious problem among young people and schools may want to test students for its use. However, alcohol does not remain in the blood long enough for most tests to detect recent use. Breathalyzers and oral-fluid tests can detect current use and measure impairment.

The limited panel also will not identify LSD, GHB, MDMA (Ecstasy), volatile solvents such as glue or gasoline or a wide range of prescription drugs widely abused by teens such as Xanax, Valium, Vicodin and OxyContin. It also will not detect anabolic steroids and related performance enhancing compounds. It will not detect the use of these five drugs that occurred more than 3 days before the urine sample was collected except that very heavy and prolonged marijuana use can produce a positive urine drug test for two weeks in some cases.

Standard Drugs of Abuse Panel usually include:

- Amphetamines (methamphetamine, amphetamine, uppers, speed, pep pills)
- Cocaine (crack, coke, snow, rock, blow)
- Cannabinoids (marijuana, dope, weed, grass, pot, reefer, mary jane)
- Opiates (codeine, morphine, heroin-H, junk, smack, china white)
- Phencyclidine (PCP, angel dust)

Other Drugs of Concern:

- Barbiturates (Phenobarbital, butalbital)
- Benzodiazepines (Valium, Xanax)
- MDMA (Ecstasy)
- Oxycodone (Percocet, Percodan, OxyContin)
- Hydrocodone (Vicodin, Lortab)
- Steroids

There are several testing methods available including urine, hair, blood, oral fluids and sweat (patch). These methods vary in cost, reliability, drugs detected and detection period. Urinalysis is the most common drug testing method and currently the only allowed in federal drug testing programs. Schools should determine their needs and choose the method that best suits their requirements. (See Appendix C)

SAMPLE OVERVIEW OF SCHOOLS THAT DRUG TEST IN KENTUCKY

► Paul Laurence Dunbar High School, Lexington, Kentucky

In 1995, the Lexington Fayette Urban County Police Department contacted Dunbar High School principal Jon Akers about several athletes involved in a recent drug bust. This event shocked the

principal and forced him to question his perception about behavior among student athletes. More importantly, parents began to discuss these recent events and asked school administrators to survey students on their perception of student drug abuse.

After analyzing the survey results, parents, teachers and coaches were shocked that rampant drug abuse was a perception among all student athletes. An open forum was held to candidly discuss drug abuse in the school and share collective attitudes among students and parents. From this meeting, the school site-based decision making (SBDM) council embarked on the creation of a student drug testing program.

Several questions the SBDM council faced:

- What should such a policy include?
- What were the legal issues about notifying parents of this policy?
- How would they randomly select students equitably?
- What guidelines were needed to maintain confidentiality?
- What safeguards were in place to avoid “false-positives?”
- What would they do if a student tested positive?
- Which drug testing company would they use?
- What about students who tried to use masking agents?
- What would be done with the drug testing records once an athlete graduated?

Once the SBDM council decided on key issues, a comprehensive policy was submitted to the Fayette County Board of Education for approval. The Board unanimously approved the policy and the student drug testing program officially began in the fall of 1996.

After completing one year of drug testing, the following program components were revisited based on feedback from school administrators:

- Notifying coaches before their athletes were to be tested was discontinued due to “information leaking out.”
- Testing for masking agents was added in an attempt to identify athletes who were trying to beat the system.
- Testing athletes right after practice proved to be problematic because of possible dehydration.
- Booster Clubs began raising money to help pay for program expenditures.
- It was best to conduct drug tests during the last period of the school day so students would not linger, waiting to render their urine sample.

► **Jessamine County High Schools (East/West)**

Seven years ago, Jessamine County’s superintendent performed a county-wide survey to help gauge feedback about the possibility of creating a student drug testing program. This survey led to the formation of a county-wide community based drug task force to help formulate a program/policy for school administrators to follow and begin testing students throughout the school system.

The school system did face some hurdles along the way when trying to construct a comprehensive program. Some of the negative criticism came from the community, mainly parents who did not fully understand the problem. Parents had concerns that it would be a waste of school time and resources, as well as the opinion that the community did not have much of a problem. An overall consensus from the task force quickly eliminated any misconceptions parents had and led to the majority of the community supporting a program.

Now, all student athletes from grades 6-12 may be tested while their sport is in season. All students who participate in a sporting activity will have their name entered into a random testing pool. In addition, funding for the student drug testing program provided by the county's board of education.

The toughest issue facing the Jessamine County school system was how to respond to a positive test result. First time violators receive a four-week or four-game suspension and the student athlete must adhere to all recommendations associated with a drug and alcohol assessment. Once the student has completed the suspension period, a follow up drug or alcohol test must be administered to ensure the student is drug-free.

Jessamine County has experienced only minimal negative feedback from the community. Students have expressed displeasure that those who need to be tested do not participate in the program. Others have said the program is a waste of financial resources, but overall the majority of the community considers it an acceptable policy.

► **Nelson County Public Schools**

In 2003, Nelson County began student drug testing in its three school districts. Its policy started with the creation of a community-based steering committee seeking information about the formation of a policy to help combat the high level of drug and alcohol abuse among the juvenile population. Information was gathered from the annual KIP survey as well as the Youth Risk Behavior survey to gain an understanding of their problem. Baseline data was analyzed to ensure their policy would be comprehensive and every parent would be comfortable about it being implemented for his/her child.

Originally, the program focused strictly on student athletes. But after further investigation, students competing in extracurricular activities and holding a student parking permit are now required to participate. The program is administered by an external drug testing agency using computer generated randomization.

After making the decision to implement a student drug testing program, the first obstacle was to obtain funding. The community felt so strongly about the need for this program that the Nelson County Fiscal Court committed \$25,000 in seed money to get the project off the ground. The Nelson County School District then applied for and received one of eight pilot program grants for student drug testing from the U.S. Department of Education. This grant applied to all three school systems in Nelson County.

After receiving funding from the Federal Department of Education, the school districts implemented their program. The greatest difficulties resulted mainly from: operating under the strict federal guidelines for data collection for the purposes of an extensive evaluation; ensuring the confidentiality would be maintained; establishing a chain of custody by testers and administration; and avoiding the adulteration of specimens by students. During the startup, Nelson County continually reiterated the importance of educating and informing parents, students, and community members about the clear and present dangers of drugs and alcohol in this community.

Officials in Nelson County believe as shown by an internal survey conducted among their school system, this program is effective and fair to all who participate. In addition, 67% of respondents

stated drug testing makes them want to avoid illegal drugs. Furthermore, 60% reported drug testing high school athletes and extracurricular participants is a good idea. Negative respondents, listed at only 15%, expressed drug testing is a bad idea in Nelson County.

► **Campbell County School System-(Middle/High)**

Campbell County started its student drug testing program in 2003 due to the efforts of the superintendent. Because of several drug-related deaths within the community, school officials were compelled to address this situation. Student drug testing became a viable option and appears to have the full support of the community.

Once the program was started, an outside agency was contracted to perform the task of testing students. The agency was given a master list of all students who participate in extracurricular activities, as well as all student athletes. To help pay for costs associated with student drug testing, the school system implemented a participation fee for students wanting to take part in extracurricular activities. The fees collected for participating in each activity cover costs associated with hiring the outside testing agency.

Currently, Campbell County schools have a tiered system of punishment for all positive tests:

- **First Violation:** A student who tests positive will be suspended from all extracurricular activities mandated by drug testing and/or parking privileges for the next four consecutive weeks. Student drivers will be denied permission to drive and/or park on school property during this time. The suspension will begin the date results are received and communicated to the student by the administrator. If necessary, the suspension shall carry over to the student's subsequent participation on another athletic team/extracurricular activity and/or the following season. In addition to the suspension period, the student will also be required to speak with the school counselor for a minimum of one acceptable counseling session (counselor will sign off on the student's success or lack thereof).
- In order to return to an activity or practice during the suspension, the student must be enrolled in a school approved drug-counseling program, submit to weekly drug testing at their expense and maintain a negative test result. Prior to participation in the activity or driving, the student must submit to a drug test administered in accordance with the same procedures utilized for random drug testing. A positive result shall be treated as a second violation.
- **After the suspension period:** The student's name will be selected for the next random drug screening. A positive result shall be treated as a second violation.
- **Second Violation:** The student who tests positive for a second violation shall be suspended for the next eighteen consecutive interscholastic/extracurricular events or eighteen consecutive weeks, whichever is greater in time. Student drivers with a second violation may be denied permission to drive and/or park on school property for the next eighteen consecutive weeks of school. If necessary, the suspension shall carry over to the student's subsequent participation on another athletic team/extracurricular activity and/or the following season. Before reinstatement to the activity after a second violation, the student participant must successfully complete recommendations that resulted from the chemical dependency assessment as evidenced by a written statement to that effect issued by a treatment counselor. The student must submit to a new drug test administered in accordance with the same procedures utilized for random drug testing. A positive result shall be treated as a third violation.

- Third Violation: A third violation shall disqualify the student's involvement in all extracurricular activities or from driving /parking on school property for the remainder of his/her enrollment in the District.

Currently, the community has supported the program and most students believe the guidelines are reasonable. Campbell County instituted the program for its middle school students as well, and since its inception no positive tests have been recorded. In addition, Campbell County has geared its program toward treatment and education. (For a complete written copy of this policy, please go to www.campbell.k12.ky.us)

GOALS OF DRUG TESTING

The primary goal of any student drug testing program is drug prevention (i.e. to help bring about healthier, drug-free students and a safe school environment). Zero tolerance policies which call for immediate expulsion of a student who fails a drug test or violates a drug abuse policy may alleviate the problem for the school, but not necessarily for the student. If students are uninformed about the risks of drug use/abuse and are not assessed for possible abuse/dependency problems and referred to an education or treatment program as needed, there is a high probability that the problem will persist and worsen. The student could continue to be at risk for continued rule/policy violations, thereby compromising the safety of the school environment.

In addition, the student is a liability to him/herself in terms of decreased productivity. Therefore, policies are needed that include provisions for the education of students about drug abuse and dependency, assessing those who either fail drug tests or violate a substance policy. Following this, referral to either an early intervention program or an appropriate level of treatment is needed. State DUI laws that have requirements for first-time and repeat offenders are excellent examples schools can follow for guidance in creating or enhancing their drug abuse policies.

To assure efficacy, the program should include administrative and scientific protocols so the testing system can be implemented with a high degree of uniformity and a minimum of subjective intervention in terms of collection, analysis and results. These protocols should then be made available and understood by all parties involved for the purpose of building confidence and avoiding costly misunderstandings that may result in litigation.

A secondary goal of student drug testing should be intervention for those who are using drugs. If the secondary goal is to prevent further use of drugs, then a number of steps must be taken to assure interventions are carried out in an appropriate manner.

Prevention, Intervention, Treatment

Prevention is a tri-level process, addressing the following populations:

- The general or universal population includes all students, regardless of drug abuse status.
- The selected population includes those who are at risk of becoming drug abusers.
- The indicated population includes those who have begun to experiment with drugs.

Student drug testing programs may involve students from all of these populations.

In America, we have a tradition of not interfering in each others' business. 'A man's home is his castle,' we say. 'To each his own,' we declare and yet there are times, for example, in cases of child

or spouse abuse when we must intervene. We realize there are situations that spin out of control and if we do not intervene, people get hurt.

Over the years, we have been less apt to intervene in someone's drinking or drug use. Historically it was believed alcohol and drug abuse was willful misconduct and if people wanted to quit, they simply had to make up their mind and do it. It was not until the 1950s the American Medical Association classified alcoholism as a disease. Since then we have come to realize that problem drinkers and drug users cannot always 'just quit,' that more times than not they need help to quit, and a lifetime of pain and suffering ensues when we do nothing to intervene.

In formal terms, intervention can be defined as: a carefully prepared, precipitated crisis which breaks through the defenses. This allows the person to see the effect that drug abuse has on him/her as well as others and understand the consequences of further use.

Employee assistance programs (EAPs) were developed in the 1970s and 80s and began to pave the way for employers to intervene with troubled employees. It became clear these employees' personal problems were affecting their behavior at work, which affected their productivity. Student assistance programs developed in the 1980s were modeled after EAPs, and designed to intervene with students whose personal problems affected their school work.

While student drug testing has been primarily used for a number of years with athletes, it has recently enjoyed increased popularity as a tool for schools to use in their overall drug prevention programming. For many students, drug testing acts as a deterrent. Just the thought of testing positive for drugs is enough to prevent some from using.

For other students, drug testing is a wake-up call. A positive drug test is so embarrassing that the test itself becomes the intervention. It is enough to deter further use. Concern for their family, friends or reputation outweighs the benefits of using.

There are other students, however, who do not respond to a positive drug test in the same way. It is human nature to rationalize our behavior if we enjoy doing something that is bad for us. Overeating, smoking and excessive credit card debts are examples of behaviors we may enjoy at the time, but have dire consequences later. Teen drug abuse is similar. There are perceived benefits derived from using drugs, such as relaxation, stress relief, peer acceptance or escape from problems.

Students who believe they derive benefits from their drinking or drug use will be more likely to see what using does for them than what it does to them. They see the benefits of their use before they see the consequences. In some cases, the consequences may be as subtle as a slight drop in grades or an increase in absenteeism. As a result, the use is not connected to the negative consequences occurring in their lives. For these students, drug testing offers an opportunity to explore this.

When schools offer a drug testing program, it is important to have a plan for assisting students who test positive. As stated earlier, drug testing alone, without offering follow up services is less than ideal. This is especially true for students with substance abuse problems. Interventions that include an assessment of the student's drug use coupled with ongoing counseling, if and when appropriate, can help prevent future problems, including addiction, legal problems and health-related concerns.

We cannot assume students who test positive for drugs have a "drug problem" nor can we assume they do not. A positive drug test simply reveals a particular drug has been consumed by the student and traces of the drug remain in the body. An assessment (or evaluation as it is sometimes called) conducted by a qualified professional reveals how much, how often and for how long the student has been using drugs. An assessment also tells us what problems the student has experienced as a

result of abuse. This information helps the professional counselor determine what services would be helpful for the student.

Assessments are typically conducted by qualified professionals in the community. However, due to a shortage of adolescent substance abuse assessors in the state and the difficulty many families experience in accessing community services, a number of schools in Kentucky have begun employing their own drug counselors.

If the assessment determines the student needs treatment, there are a variety of options to choose. Some students may only be minimally involved, so a brief educational program offered in the school or community will suffice. These types of programs are typically 6-10 weeks in length and provide a mix of drug specific information and an opportunity for students to discuss issues like peer pressure, stress, relationships and healthy alternatives to using.

Students who are more heavily involved with drugs may need longer, more intensive treatment. Outpatient treatment commonly occurs at a community agency (although some schools in Kentucky have hired their own counselors to provide this service) and may involve individual, group or family therapy. The goal of treatment is to help the adolescent reduce or eliminate his/her use of drugs and outpatient treatment allows this while living at home and in the community.

Students who need more restrictive care are typically referred to a residential, or in some cases, an inpatient program. Residential programs are long term programs (4-12 months) for adolescents who need to be removed from their environment for an extended period of time in order to develop fundamental coping skills and strategies for remaining drug free when they return home.

Inpatient programs are shorter in length (30-45 days on average) and are more appropriate for teens that require crisis intervention and stabilization due to co-occurring mental health problems, suicidal thoughts or acute family crises. It is generally agreed adolescents are better served in their community so their families can be involved in the treatment. However, treatment professionals will be quick to point out this is not always possible and there are times when the best intervention is inpatient hospitalization or a long-term residential program. (3. See additional comment section at the end of paper.)

STUDENT DRUG TESTING SUMMIT

At the recommendation of the Student Drug Testing Advisory Council, ODCP and ONDCP co-hosted a Student Drug Testing Summit on February 28, 2006, at The Brown Hotel in Louisville, Kentucky. Participants consisted of approximately 250 school personnel, parents, students and other interested parties who gathered to learn more about student drug testing issues.

Five breakout sessions were held in the afternoon and were then repeated. One hour of Effective Instructional Leadership Act (EILA) credit was awarded per breakout session attended. The breakout sessions were as follows:

“Conversations with . . .”

► Legal issues – research issues

David Evans - Drug-Free Schools Coalition (Facilitator)
John Fogle - Kentucky School Boards Association
Virginia Gregg - Fayette County Board of Education
Bob Illback - REACH of Louisville, Inc.

Description: This breakout session consisted of an interactive workshop focusing on legal and research issues involved when considering the establishment of student drug testing programs. The most recent court rulings surrounding student drug testing issues were discussed. Presenters in this breakout are recognized as an expert in this field, either nationally or locally.

► *Policies and implementation*

Dara Bass - Kentucky School Boards Association (Facilitator)
Jan Lantz - Nelson County Schools
Wanda Gaskin - Pulaski County Schools
Stacie Wimsett - Nelson County Schools
Gail Thompson - Nelson County Schools

Description: This breakout session consisted of an interactive workshop that provided an overview of policies and implementation of student drug testing programs. Discussion included various types of school policies and how school officials could begin a dialogue introducing student drug testing programs to their communities and how they could determine which type of program (voluntary or random/mandatory) best suits their needs. Presenters in this breakout are local experts who have been instrumental in the development of their school's program.

► *Principal conversation*

Chris Steffner - Hackettstown, NJ (Facilitator)
John Riehemann - Kentucky School Administrators Association
Ken Trivette - Pike County Independent Schools
Jon Akers - Kentucky Center for School Safety

Description: This breakout session consisted of an interactive workshop with principals from across the state of Kentucky who have been involved with student drug testing programs in their schools. Issues they have addressed with operating these programs were also discussed.

► *Intervention*

Barry Kellond - Division of Mental Health and Substance Abuse (Facilitator)
Ken Bucher - NorthKey
Beth Hicks - National Student Assistance Program
Charlie Baker - Jefferson County Public Schools

Description: This breakout session consisted of an interactive workshop with experts in the field of mental health and substance abuse and prevention. Discussion centered on strategies for intervening with the growing problem of student drug abuse among our youth and the options available.

► *Drug Testing and Costs*

Sonja Johnson Hoppe - Southwest Laboratories (Facilitator)
Helen Spencer - Forward Edge
Jeff Sims - aTest Consultants, Inc.
Brian Walters - Premier Drug Testing

Description: This breakout session consisted of an interactive workshop where representatives from laboratories discussed technology available for purchase and use by school districts and the costs associated with testing. They provided information about test sensitivities for detecting various types of drugs and made recommendations about which types of tests are best, depending on the nature of the drugs of abuse in their schools.

CORRELATION BETWEEN PROBLEM BEHAVIOR AND YOUTH SUBSTANCE ABUSE

Several large-scale research projects have demonstrated a strong association between substance abuse and conduct disorders and emotional problems among children, youth and adults (Substance Abuse and Mental Health Services Administration, 1999). Some studies indicate that these disorders co-occur at rates as high as 56% (Kessler, Nelson, McGonagle, Edlund, Frank & Leaf, 1996; Regier, Farmer, Rae, et.al., 1980). In a report to Congress, the US Department of Health and Human Services reported almost half of the youth receiving mental health services have a co-occurring behavioral or conduct disorder (Substance Abuse and Mental Health Services Administration, 2002). Within a population of adolescents who participated in the well-known Fort Bragg Demonstration project, it was found the cost of care for youth with both substance abuse and conduct disorders was more than twice as high as the sample that did not have co-occurring disorders. (King, Gaines, Lambert, Summerfelt, & Thomas, 2000).

There is ample evidence of this correlation in Kentucky. In fall of 2004, the KIP survey was administered to approximately 97,000 Kentucky public school students, representing 125 of the 176 school districts. Students in grades 6, 8, 10 and 12 were asked about their use of alcohol, tobacco and other drugs (ATOD), as well as questions regarding attitudes, perceptions, problem behavior and school safety. The table below shows the correlations between use of certain substances within the past 30 days and three kinds of problem behavior. All of these correlations were statistically significant, although most were in the low to moderate range. The highest correlation was between 30-day alcohol use and fighting with other kids. The next highest correlations were between 30-day marijuana use and fighting with other kids and 30-day alcohol use and fighting with parents. These data show Kentucky students who engaged in using alcohol and other drugs were more likely to engage in other problem behaviors.

Problem Behavior	Alcohol (30-day use)	Marijuana (30-day use)	Cocaine (30-day use)	Oxycontin (30-day use)	Meth (30-day use)	Ecstasy (30-day use)
Got in trouble in school	.197	.215	.186	.189	.176	.195
Got into fights (verbal or physical) with other kids	.356	.305	.181	.190	.178	.203
Got into fights with my parents	.295	.288	.180	.180	.184	.198

Numerous explanations have been presented about the relationships between substance abuse and disorders of conduct (antisocial behavior). These include that: (1) substance abuse fuels antisocial behavior in youth; (2) youth with problems of conduct are more vulnerable to substance abuse; (3) there is a reciprocal relationship between substance use and conduct disorders; and (4) both are related to some underlying vulnerability or risk factor (e.g., genetic liability). In all probability, each of these mechanisms plays a role for various subgroups, to one extent or another.

There is emerging research that substance abuse can play a significant role in the development of youth toward serious antisocial behavior. This can occur by “launching” young people on a long-term course toward disorders of conduct at an early age, or it can occur by increasing the likelihood of antisocial acts in given situations through reduction in the ability to stop the undesirable behavior (Hussong, Curran, Moffitt, Caspi & Carrig, 2004). The implication of this research is by reducing the prevalence of early substance abuse, rates of subsequent involvement in antisocial behavior can be reduced, resulting in fewer ruined lives and diminished cost to society. It is believed that the implementation of a community and school supported student drug testing program will, as discussed, deter student drug use in our schools, as well as serving as a vehicle for intervention and treatment for students who may presently have drug problems.

CONCLUSION AND RECOMMENDATION

The Student Drug Testing Advisory Council was established in March 2005 based on a recommendation of participants of the 2004 Kentucky Statewide Drug Control Assessment Summit. Stakeholders and experts in education, criminal justice, treatment, prevention, school administration and other interested individuals over the past 13 months have heard from experts in the legal field, those who have participated in the practical application of drug testing, parents, students, officials from the local, state and federal level and participated in the conference.

Random student drug testing is currently being used in many of Kentucky schools as a component of a comprehensive drug education and prevention program. Within that program, there are prevention and intervention programs that have been proven to be effective and are available to schools, families and communities.

Children have the best prospects for leading healthy, drug-free lives when schools support parents in their anti-drug message. There should be nothing confusing or contradictory in what children learn about drugs from the adults in their lives and school policies need to reflect the same attitude toward alcohol and other drugs that you express at home. Drug use is not acceptable. Drugs diminish a student's ability to concentrate and manage academic responsibilities. They cause loss of motivation, increase absenteeism and students who use drugs can be disruptive and drain teachers' time and energy. The most effective way to ensure that the anti-drug policies at your child's school are strong is to be involved by:

- Learning about the current policies regarding alcohol and other drugs at your child's school;
- Familiarizing yourself with how drug education is being taught in your child's school;
- Being consistent in the school's drug education message at home;
- Finding out if your child's school conducts assessments of its drug problem and whether these results are used in the program;
- Asking what happens to those who are caught abusing drugs;
- Requesting and examining any existing materials; and
- Investigating whether your school's anti-drug program is being evaluated for success.

We know that addiction is a pediatric-onset disease that needs a strong public health response. Research shows:

- The earlier a child starts using drugs, the more likely he or she will be to develop a substance abuse problem;

- 1.4 million American teenagers between the ages of 12 and 17 are in need of drug treatment; and
- Students who use drugs are statistically more likely than nonusers to quit school, bring weapons to school, be involved in physical attacks, theft and skipping classes.

Before implementing a drug-testing program, parents, schools and communities must ensure appropriate resources are available to help students who test positive. Schools have a role in educating parents about exactly what drug tests are measuring, what to do if their child tests positive and if necessary, find drug treatment.

The intent of drug testing is not to punish students who use drugs but to prevent drug dependence and help students become drug free. Test results should remain confidential and not be used as a law enforcement tool.

It is the conclusion of the Student Drug Testing Advisory Council that drug testing is an effective tool in preventing student drug use as part of a comprehensive prevention program and an excellent instrument for identifying students abusing drugs so they can be referred to treatment to receive the help they need.

LEGAL AUTHORITIES AND WORKS CITED

1. *Vernonia School District 47J v. Acton*¹ 514 US 646 (1995).
2. *Board of Ed. of Independent School Dist. v. Earls*, 536 U.S. 822 (2002).
3. The immediate U.S. Supreme Court precedents that paved the way toward student drug testing were *Skinner v. Railway Labor Executive Sss'n*, 489 US 602, and *National Treasury Employees Union v. Von Raab*, and *New Jersey v. T.L.O.*, 469 U.S. 325.
4. Schools and school personnel are government actors.
5. Standing in the place or in the shoes of parents.
6. *Board. of Ed. of Independent School Dist. v. Earls*, 536 U.S. 822 (2002).
7. *Hedges v. Musco*, 204 F.3d 109 (3rd Cir. 2000).
8. *Todd v. Rush County Schools*, 139 F.3d 571 (7th Cir. 1998).
9. *Board of Education of Independent School Dist. v. Earls*, 536 U.S. 822 (2002).
10. *Joye v. Hunderton Central Regional High School Board of Education*, 176 N.J. 568, 826 A.2d 624 (2003).
11. Alcoholism Drug Abuse Weekly, Volume 17, Number 42, October 31, 2005.
12. Ryoko, Yamaguchi, Lloyd D. Johnson, Patrick M. O'Malley, "Relationship Between Student Illicit Drug Use and School Drug-Testing Policies," Journal of School Health, Volume 73, No. 4, April 2003.

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2. SAMHSA. Kentucky Uniform Application FFY 2006 Substance Abuse Prevention and Treatment Block Grant. Division of State and Community Assistance, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services. OMB No. 0930-0080.
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REFERENCES: CORRELATION BETWEEN PROBLEM BEHAVIOR AND YOUTH SUBSTANCE ABUSE

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3. Regier, D.A.; Farmer, M.E.; Rae, D.S.; et al. Comorbidity of mental disorders with alcohol and other drug abuse. Results from the Epidemiologic Catchment Area (ECA) study. *JAMA: Journal of the American Medical Association* 264(19):2511–2518, 1990.

4. Substance Abuse and Mental Health Services Administration (SAMHSA) (1999). *The Relationship Between Mental Health and Substance Abuse Among Adolescents*. Rockville, MD: SAMHSA Office of Applied Studies.
5. Substance Abuse and Mental Health Services Administration (SAMHSA) (2002). *Report to Congress on the Prevention and Treatment of Co-Occurring Substance Abuse Disorders and Mental Disorders*. Washington, DC: U.S. Department of Health and Human Services.

ADDITIONAL COMMENTS

1. *Hedges v. Musco* must be approached with caution. While the case did strongly uphold reasonable suspicion drug testing under the Federal Constitution, the case involved a New Jersey statute which requires such testing. Kentucky has not such statute, nor does it have a statute providing state law immunity in such circumstances as is the case in New Jersey. There is no known case precedent covering Kentucky (Ky., 6th Cir., U.S. Supreme Court) upholding student reasonable suspicion testing.
2. *Thompson v. Fayette Co. Public Schools*, 786 SW2d 879 (1990) (extra-curricular participation held to be a privilege, not a right); *Pirshel v. Sorrell*, 2 F. Supp 2nd 930 (E.D. Ky. 1998) student discipline permissible if related to “legitimate pedagogical concern.”
3. Given confidentiality and liability issues and the lack of statutory coverage or immunity for such activities, caution must be exercised and counsel should be closely consulted regarding active involvement of Kentucky school districts in the medical evaluation and treatment of student drug abuse.

GLOSSARY

Chain of custody - the process of tracking specimen collection and handling from initial collection to final analysis and report.

Confirmation test - a second drug or alcohol test, on the same specimen, used to identify the presence of a specific drug or metabolite or alcohol in a specimen following an initial positive screen.

Extracurricular activity - any school or school related activity, including athletics, which is not required as part of a student's mandated basic educational curriculum.

Masking agents – products that have the potential to impair the excretion of prohibited substances or to conceal their presence in urine or other samples used in doping control.

Medical Review Officer - a physician knowledgeable in a) drug test technology and how such tests should be administered and interpreted, and b) in the effects of drugs on the human body and how drugs are detected by drug tests.

Random selection or random test - a mechanism for selecting students for drug or alcohol tests that a) results in an equal probability that any student from a group of students subject to the selection mechanism will be selected, and b) does not give the school discretion to waive the selection of any student selected under the mechanism.

Reasonable suspicion - a reasonable belief a student is using or has used drugs or alcohol in violation of the school's policy. The belief shall be drawn from specific objective and articulated facts and reasonable inferences drawn from those facts in light of experience, and may be based upon, among other things:

- a. Observable phenomena, such as direct observation of drug or alcohol use or the physical symptoms or manifestations of being under the influence of a drug or alcohol or physical signs and symptoms consistent with such use.
- b. Abnormal conduct or erratic behavior while at school or at school activities;
- c. A report of drug or alcohol use provided by reliable and credible sources;
- d. Evidence that a student has tampered with a drug or alcohol test;
- e. Information that a student has caused, or contributed to a disciplinary incident as defined by the school's policy;
- f. Evidence that a student is involved in the use, possession, sale, solicitation or transfer of drugs or alcohol while at school or at a school activity;
- g. Adequately documented pattern of unsatisfactory school performance or a change in a student's prior pattern of school performance (absenteeism, tardiness or deterioration in school performance);
- h. A serious or potentially serious accident that may have been caused by human error or violations of established safety, security, or other operating procedures; or
- i. Fighting (to mean physical contact) and assaults, or aggressive or violent behavior or behavior that could cause injury to the student or those around the student.

Student Assistance Programs - provide prevention, intervention and recovery services in schools. Prevention services include classroom curriculum, drug-free clubs and training to assist teachers in

identifying at-risk students. Intervention services include screening students who are exhibiting early warning signs of substance abuse and counseling and referral services for students who have violated the school's drug and alcohol policy. Recovery services include support groups for students returning from residential or inpatient treatment programs.

CASES AND STATUTES RELATED TO SCHOOL DRUG TESTING

Fourth Amendment U.S. Constitution	U.S Constitutional protection against unreasonable search and seizure.
Kentucky Constitution's § 10	Kentucky Constitution's protection against unreasonable search and seizure.
<i>Miranda v. Arizona</i> , 384 U.S. 436	U.S. Supreme Court decision securing the privilege against self-incrimination (perhaps best remembered for the "Miranda warnings" made by police prior to questioning or detention). See also Fifth Amendment of the U.S. Constitution or <u>Section 11</u> of the Kentucky Constitution
<i>Skinner v. Railway Labor Executive Ass'n</i> , 489 US 602	This case was decided by the Court as a companion to and on the same day as <i>National Treasury Employees Union</i> . The Supreme Court was presented with whether a warrant, probable cause, or some level of individualized suspicion was required for the government to drug test certain public employees. The Court held that warrantless and suspicionless employee drug testing is permissible only where the search meets a "reasonableness" standard. Reasonableness was determined by "balancing [the government's] intrusion on the individual's fourth amendment interests against its promotion of legitimate governmental interests." The Court limited the government's use of the test results prohibiting their use by law enforcement or prosecution.
<i>National Treasury Employees Union v. Von Raab</i>	See <i>Skinner</i> above. This case was decided by the Court as a companion to and on the same day as <i>Skinner v. Railway Labor Executive Ass'n</i> .
<i>New Jersey v. T.L.O.</i> , 469 U.S. 325	The court expressed that students had a low expectation of privacy at school and generally as they lack many fundamental freedoms un-emancipated minors.
<i>Vernonia School District 47J v. Acton and Brd. of Ed. of Independent School Dist. v. Earls</i> , 514 US 646 (1995)	U.S. Supreme Court upheld a random drug testing of student athletes. The Court based its decision on the "role model" stature of athletes; the narrowly tailored non-punitive plan; and the school's important interest outweighed the athlete's diminished privacy expectations.
<i>Board Of Education Of Independent School District No. 92 Of Pottawatomie County v. Earls</i> , 536 U.S. 822 (2002).	Upheld a school drug testing policy testing all students participating in extracurricular activities, including but not limited to athletics. The Plan tested all students before they could participate and then randomly tested thereafter and at anytime based on "reasonable suspicion".
<i>Miller v. Wilkes</i> , 172 F.3d 574 (8 th Cir. 1999)	Upheld random drug testing plan that imposed disqualification from extracurricular activities as a sanction for refusal to submit to testing or a positive test result.
<i>Willis by Willis v. Anderson County Community School Corp.</i> , 158 F.3d 415 (7 th Cir. 1998)	The court rejected a drug testing program that tested all suspended students without regard to whether their disciplinary offense had any reasonable relationship to drug use.
<i>Hedges v. Musco</i> , 204 F.3d 109 (3rd Cir. 2000)	Upheld suspicion based drug testing of students who appeared to be under the influence of alcohol or drugs.
<i>Todd v. Rush County Schools</i> , 139 F.3d 571 (7th Cir. 1998)	Upheld testing of all students involved in extracurricular activities.
<i>Joye v. Hunderton Central Regional High school Board of Education</i> , 176 N.J. 568, 826 A.2d 624 (2003)	Upheld a drug testing plan testing extracurricular activity participants, including athletes, and student drivers.
<i>Crager v. Knox County Board of Education</i> , 158 F3d 361 (6 th Cir. 2004)	Federal Court for the Eastern District of Kentucky upheld random drug testing of school teachers provided the test results were not provided to law enforcement (as in <i>Skinner</i> and <i>Raab</i> above).

<i>Thompson v. Fayette County Public Schools</i> , Ky. App., 786 S.W.2d 879 (1990)	Kentucky Court of Appeals was faced with a student athlete who was disqualified for poor grades. The Court held that participation in extracurricular activities is not a constitutionally protected right but a privilege for students who meet the clear qualifications for participation.
<i>Welch v. Commonwealth of Kentucky</i> , 149 S.W.3d 407 (Ky. 2004)	The Kentucky Supreme Court recognized the applicability of <u>Miranda</u> in situations not involving law enforcement where a query could illicit a self incriminating response from a minor child.
KRS 158.153(4)	Allows schools to set conduct standards for participation in extracurricular activities including disqualification for failure to meet the standards.
KRS 158.155(4)	Requires school personnel to report certain criminal activity including drug use, sale or possession on or within 1000' school property.
KRS 160.700	Kentucky equivalent of the Family Rights and Privacy Protection Act (20 U.S.C. §1232g) that protects the privacy of student records.

A QUICK LOOK AT STATE LAWS

State laws that:

1. Require reporting criminal activity to local law enforcement.
AL:Sec. 16-1-24.1(b)
IL:105 ILCS 127/1
LA:T.14, ch2, Pt. V, sec. 403.1
OR:ORS Sec. 40.245 (it's not specific but certainly arguable)
UT:Utah Code Ann. Sec. 78-3e-2
2. Provide immunity to school personnel who report use by students.
AL:Sec. 16-1-24.1(g)
CT:Sec. 10-154a(d)
LA:T.14, ch2, Pt. V, sec. 403.1(F)
NJ:18A: 40A-13, 14
NM:N.M. Stat. Ann. Sec. 22-5-4.4(B)
OK:70 Okl. St. Sec. 24-138
PA:42 Pa. C.S. Sec. 8337
3. Authorizes alcohol testing of student suspected of being under the influence: test method must be as adopted by federal DOT.
WI:118.45
4. Requires that certain student information be maintained confidentially.
LA:La. R.S. 40: 1098.8
NJ:18A: 40A-7.1
OH:ORC Ann. 3319.321
OR:ORS Sec. 40.245
5. Requires school to have prevention/counseling services.
AR:Sec. 6-13-627
LA:La. R.S. 17: 402, 403(c)
NJ:18A: 40A-18
6. Requires each to be given written procedures for dealing with student who is under the influence.
OK:70 Okl. St. Sec. 24-138(B)
7. Requires/permits establishing a drug-free school committee.
AL:Sec. 16-1-24.1
DE:14 Del. C. Sec. 3805
8. Requires each certified teacher to be trained within the first year of employment regarding the identification and reporting of student substance abuse.
NM:N.M. Stat. Ann. Sec. 22-10-3.2

Source: Drug Free Schools Coalition

Urine Drug Testing

Advantages

- Highest assurance of reliable results (uniform testing, performance testing, federally approved)
- Least expensive
- Able to test for more drugs than standard 5 panel

Disadvantages

- No dose concentration (can only determine presence or absence)
- Specimen can be adulterated, diluted or substituted
- Collection procedure may be considered invasive or embarrassing
- Detection time 2-3 days

Hair Drug Testing

Advantages

- Provides a longer estimate of time of drug use
- More difficult to adulterate
- Specimen is more stable

Disadvantages

- Inability to detect recent use
- Possibility of hair color bias
- Collection procedures may be considered invasive
- Concerns regarding no head hair-where to collect
- More costly

Blood Drug Testing

Advantages

- Able to detect a wide variety of drugs
- Test results may be interpreted in relationship to behavior of donor

Disadvantages

- Collection is invasive, health concerns
- Expensive (analytical methods are difficult and time consuming)
- Longer turnaround time

Oral Fluids Drug Testing

Advantages

- Sample is obtained at any location under direct observation
- Adulteration potential is minimal
- Reflect very recent drug use
- Less invasive to collect than urine, hair or blood

Disadvantages

- Shorter window of detection
- Concerns regarding marijuana use, differentiating passive inhalation from use
- Limited drug panel

Sweat Patch Drug Testing

Advantages

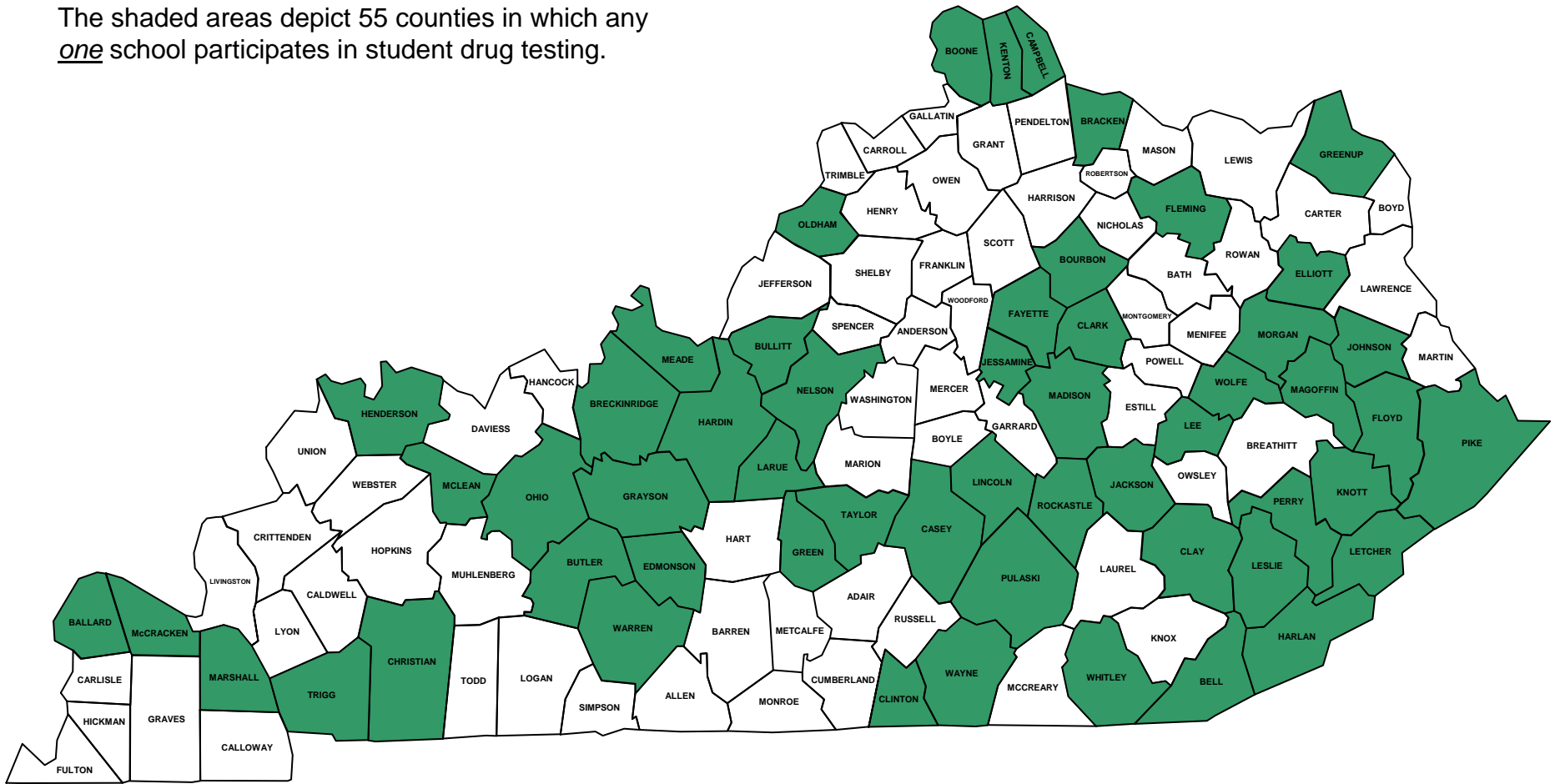
- Non-invasive
- Longer window of detection than urine
- Tamper-evident

Disadvantages

- Limited number of labs offering this test (one)
- Passive exposure may contaminate patch and affect results
- People with skin eruptions or excessive hair can not wear the patch

The shaded areas depict 55 counties in which any school participates in student drug testing.

The shaded areas depict 55 counties in which any one school participates in student drug testing.



Appendix F

Student Drug Testing in Kentucky Schools; January 2006				
County	School	Description	Contact	Telephone
Ballard	Ballard County Schools	Athletes	Bob Wilson	270-665-8400
Bell	Bell County Schools	Random, 7th grade and up; extracurricular & drivers	Pam Greene	606-337-7051
Bell	Middlesboro Independent	Random; drivers and extracurricular	John Chadwell	606-242-8800
Bell	Pineville Independent	Random; all extracurricular	Woody Howard	606-337-5701
Boone	Walton Verona Independent	Athletes; one initial screen, then random	Mark Krummer	859-485-7721
Bourbon	Bourbon Independent HS	Random; athletes	Jeff Isaacs	859-987-2160
Bracken	Augusta Independent HS	Random checks of Champions Club members	Robert Hall	606-756-2545
Breckinridge	Breckinridge County Schools	All extracurricular activities	Veronica Ent	502-756-2149
Breckinridge	Cloverport Independent	All athletes are tested	Cheryl Armes	270-788-3910
Bullitt	Bullitt County Day Treatment	Random and reasonable suspicion	Doug Roberts	502-543-8300
Butler	Butler County HS	Random; student drivers, athletes & extracurricular	Kenneth Reed	270-526-5624
Campbell	Campbell County HS	Random, athletes, student drivers, extracurricular	John Hardy	859-635-4161
Campbell	Dayton Independent	Random; athletes only	Greg Baxter	859-491-6565
Casey	Casey County High School	Information unavailable	Tim Goodlett	606-787-6906
Christian	Christian County Schools	Athletes	Beth Campbell	270-890-1998
Clark	George Rogers Clark HS	Principal requires if faculty/staff have suspicions	M.R. Parrido	859-744-6111
Clay	Clay County Schools	Athletes	Deanna Allen	606-598-2168
Clinton	Clinton County HS	Random, every month; extracurricular; student drivers	Joe Summers	606-387-6480
Edmonson	Edmonson County HS	Random; student drivers; athletes; all school clubs	Brian Alexander	270-597-2151
Elliott	Elliott County HS	Random; extracurricular; Reasonable Suspicion, driver	John Williams	606-738-8002
Fayette	Dunbar HS	All athletes are tested	Mike Baron	859-381-3546
Fayette	Tates Creek HS	All athletes are tested	Joe Ruddell	859-381-3620
Fleming	Fleming County HS	Random in extracurricular and student drivers	Johna Bacon	606-845-3094
Floyd	Allen Central HS	Parents may volunteer their children for drug testing Random in extracurricular; all student drivers; all staff	Jennifer Martin	606-886-4518
Floyd	Betsy Layne HS	Parents may volunteer their children for drug testing Random in extracurricular; all student drivers; all staff	Jennifer Martin	606-886-4518

Floyd	Prestonsburg HS	Parents may volunteer their children for drug testing Random in extracurricular; all student drivers; all staff	Jennifer Martin	606-886-4518
Floyd	South Floyd HS	Parents may volunteer their children for drug testing Random in extracurricular; all student drivers; all staff	Jennifer Martin	606-886-4518
Grayson	Grayson County Schools	All athletes are tested	Angie Jones	270-230-8113
Green	Green County HS	Athletes	Jim Frank	270-932-5231
Greenup	Russell Independent H.S.	Random; drivers and extracurricular	Sam Sparks	606-836-7697
Hardin	Hardin County School	All athletes are tested	Joyce Seymour	270-769-8832
Hardin	Elizabethtown Independent HS	Random; all athletes	Nicki Clark	270-765-6146
Harlan	Harlan Independent H.S.	Random; extracurricular	Charles Morton	606-573-8700
Henderson	Henderson County HS	Policy violators suspected of drug use	Bruce Farris	270-831-8810
Jackson	Jackson County Schools	Random: drivers, extracurricular; athletes	Mike Smith	606-287-7181
Jessamine	East Jessamine HS	Random for athletes	Charles Temple	859-885-4170
Jessamine	West Jessamine HS	Random for athletes	Charles Temple	859-885-4170
Johnson	Johnson County H.S.	Random; student drivers; extracurricular activities; staff	Coy Samons	606-789-2654
Johnson	Paintsville Independent	Random; drivers and extracurricular	Ashley Chirico	606-789-2654
Kenton	Erlanger-Elsmere Independent	Random, athletes; voluntary & random Drug Free Club	David Davis	859-727-2009
Knott	Knott County Schools	Extracurricular and drivers	Harold Combs	606-785-3153
LaRue	LaRue County Schools	All athletes are tested	David Dawson	270-358-2210
Lee	Lee County Schools	Random & voluntary; athletes, drivers, extracurricular	Glenna Cummins	606-464-5000
Leslie	Leslie County Schools	Random; extracurricular and drivers	Anthony Little	606-672-2397
Letcher	Letcher County Central H.S.	Random; all students	Hillard Howard	606-633-4455
Lincoln	Lincoln County HS	Random for extracurricular and student drivers	Eva Stone	606-365-2124
Madison	Madison Southern	Mandatory for Student Athletes; voluntary for others	David Gillam	859-624-3622
Madison	Madison Central	Mandatory for Student Athletes; voluntary for others	Gary Fritz	859-624-4505
McCracken	Paducah Independent	Reasonable suspicion	John Leeper	270-444-5600
Magoffin	Magoffin County HS	Random; student drivers; extracurricular activities; staff	Ronnie Gullett	606-349-6117
Marshall	Marshall County Schools	Random; athletes	Ellen Fisk	270-527-1453
McLean	McLean County HS	Voluntary: students volunteer to join the Cougar Pride Card; agree to random drug testing, substance abuse prevention training, community volunteer service. They receive a discount card from local businesses.	Mindy Rickard	270-273-9642

Meade	Meade County Schools	Random & Voluntary; parents can sign up kids even if they do not participate in activities; Some club sponsors and coaches make it mandatory	Bev Morrison	270-422-7515
Morgan	Morgan County HS	Random; 20% drivers, 20% athletes	Information Unavailable	Information Unavailable
Nelson	Nelson County Public Schools	Random; athletes, extracurricular, student drivers	Stacie Wimsett	502-349-7000
Nelson	County schools; Bardstown HS	All athletes are tested; they have a federal grant to support drug testing	Tonda Lockett	502-348-5947
Nelson	Bardstown Independent	Random; athletes, drivers, extracurricular	Sheila Abell	502-331-8800
Ohio	Ohio County HS	First test is voluntary and after that, random. The policy is for the Eagle Pride/Team Esteem Club.	Jennifer Phelps	270-274-9599
Oldham	Oldham County Schools	Voluntary; athletes	Mike Williams	502-222-8880
Perry	Hazard Independent HS	Extracurricular	Don Pratt	606-436-3911
Pike	Pikeville High School	Random; all student athletes	Billy Johnson	606-432-8161
Pike	Belfry	random; student drivers; extracurricular activities	Rosalind Stanley	606-433-9247
Pike	East Ridge HS	Random; student drivers; extracurricular activities	Rosalind Stanley	606-433-9247
Pike	Phelps HS	Random; student drivers; extracurricular activities	Rosalind Stanley	606-433-9247
Pike	Pike County Central HS	Random; student drivers; extracurricular activities	Rosalind Stanley	606-433-9247
Pike	Shelby Valley HS	Random; student drivers; extracurricular activities	Rosalind Stanley	606-433-9247
Pike	Pikeville Independent H.S.	Random & mandatory; athletes; extracurricular sports	Ken Trivette	606-432-8161
Pulaski	Pulaski County HS	Random; student athletes; extracurricular and student drivers	Wanda Gaskin	606-679-1123
Pulaski	Pulaski Central Alternative	Random; student drivers	Wanda Gaskin	606-679-1123
Pulaski	Southwestern H.S.	Random; student athletes; extracurricular and student drivers	Wanda Gaskin	606-679-1123
Rockcastle	Rockcastle County HS	Mandatory at beginning of season, then random	J.B. Noble	606-256-4816
Taylor	Campbellsville HS	No description	Jim Hardy	270-465-8774
Trigg	Trigg County HS	Athletes Only	Taylor Sparks	270-522-2200
Warren	Warren East HS	Random; athletes	Randall Jackson	270-781-5150
Warren	Warren Central HS	Random; athletes	Randall Jackson	270-781-5150
Warren	Greenwood HS	Random; athletes	Randall Jackson	270-781-5150
Wayne	Wayne County	Athletes; extracurricular and drivers	Janice Barrier	606-348-8484
Wayne	Monticello Independent	Random; athletes, extracurricular, student drivers	Marla Kelsch	606-348-5311
Whitley	Whitley County HS	Voluntary in Junior High; Random athletes, drivers,	Lee Schroeder	606-549-7025
Whitley	Corbin Independent HS	Random, athletes only	Gerald Foley	606-528-1303
Wolfe	Wolfe County Schools	Athletes	Glena Oliver	606-668-8002